CF0000062951

(2)

"allotted by the High Court Legal Services Committee"

IN THE HIGH COURT OF JUDICATURE AT JABALPUR [M.P.]

Criminal Appeal No. 1070 **/2000** Division Bench (iminal)

(CRIMINAL APPEAL U/S 374 (2) OF THE CODE OF)
(CRIMINAL PROCEDURE 1973)

Appellant : 1. Danar Bhatra S/o Shri Ramu Bhatra
(in jail) Aged about 35 years P/o Melpawond
Police Station – Nagarmar – at
present Sub Jail Sukma District
Dantawara (M.P.)

Dr. A.R

VERSUS

Respondent : State of M. P. Through
P.S. Sukam
District Dantawara (M.P.)

CONVICTION **SENTENCE**

(15)

(13)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 1070/'00 **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1070 of 2000

Appellant : **Danar Bhatra**

Vs.

Respondent : **State of M.P.**

Shri Praveen Das, learned counsel for the appellant.

Shri U.K.S. Chandel, learned P.L. for the State/respondent.

ORAL JUDGMENT
(13.09.2006)

Per L.C.Bhadoo, J

By this appeal under Section 374(2) of the Criminal Procedure Code the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 13/3/2000 passed by learned Second Additional Sessions Judge, Bastar, Jagdalpur in S.T. No. 345/99 whereby the learned Second Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Sections 302 and 323 of the IPC sentenced him to undergo imprisonment for life under Section 302 and to undergo RI for 6 months Under Section 323 of the IPC.

Case of the prosecution, in brief, is that on 19/6/1999 in the noon when the accused/appellant namely Danar Bhatra and deceased Hemla Ganga were in sub jail Sukma, on that day eleven inmates were taken to

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.1070/'00 **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the circle ground, for weeding out the grass. The accused was carrying pickaxe whereas Hemala Ganga deceased was working without any implement, all of a sudden, the accused attacked deceased Hemala Ganga with pickaxe three times, on his head and other parts of the body as a result of the attack Hemala Ganga sustained fatal injuries on his head and other parts of the body and he fell down. When PW-2 Pachkodram, warder of the Jail tried to intervene, the accused ran away after him carrying pickaxe in order to assault him and in fact, he assaulted him. He received injuries on his back however, he was able to escape. He also assaulted PW-5 Ghanshyam who received the injury on his thumb. PW-4 Kawasi Guddi was able to catch hold of the accused, snatched the pickaxe from him and the matter was reported by PW-5 Ghanshyam in the police station Sukma, upon which the FIR (Ex.P/4) was registered for commission offence under Section 302 of the IPC. Merg intimation (Ex.P/5) was also given by Ghanshyam. Tehsildar H.L. Gayakwad (PW-9) received the information from the Assistant Jailer about the incident, on which he reached the sub jail and prepared Panchnama (Ex.P/1) of the dead body of Hemla Ganga in the presence of employees. The body of Hemla Ganga was sent for postmortem examination to the Primary Health Center, Sukma where Dr. B. S. Thakur (PW-10) conducted the postmortem and prepared the report (Ex. P/9). He noticed three injuries viz (i) one lacerated wound on left lateral eyebrow in the size of 1" x ½" (ii) one lacerated wound on lower 1/3rd of left pinna transversally directed wound continued to mastoid region of head in the size of 2" x ½" (iii) one lacerated wound on left occipital region of head in the size of 1." x ½". On dissection, there were multiple fractures below the injuries No. 1, 2 & 3. Skull bone was turned into pieces. He opined that the cause of death was

P.T.O.

(15)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.1870/'00 **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

shock with inhibition and severe cerebral and haemorrhage. Cause of death was homicidal in nature.

The pickaxe, plain soil and bloodstained soil were taken into possession under Ex-P/3. The site plan (Ex.-P/15) was prepared by the Investigating Officer. Injured witnesses Pachkodram and Ghanshyam were also examined by PW-10 Dr. B.S. Thakur and he prepared the injury reports Ex-P/14 and Ex-P/13 respectively. The pickaxe was sent for chemical examination to the FSL Raipur.

After completion of investigation, the charge sheet was filed in the Court of J.M.F.C., Sukma who in turn committed the case to the Sessions Judge, Jagdalpur from where learned 2nd Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 11 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced the appellant as mentioned in para-1 of the judgment.

We have heard learned counsel for the parties and perused the record.

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.1070/'00 **सन्** 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The homicidal death of Hemala Ganga has not been disputed by counsel for the appellant. Apart from that, as per evidence Dr. Bhagawan Singh Thakur (PW-10) and eye witnesses PW-2 Pachkodram, PW-4 Kawasi Guddi, PW-5 Ghanshyam and PW-6 Pardeshi, who witnessed the crime, it is established that the death of Hemala Ganga was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, PW-2 Pachkodram who at the relevant time was supervising the work of jail inmates who were asked to weed out grass, was standing in the premises of sub-jail, has stated that he was on duty from 10 a.m. to 2 p.m. and 11 jail inmates were weeding out the grass. The accused Danar Bhatra was having pickaxe in his hand. The accused along with Hemela Ganga was working there, the accused was weeding the grass with pickaxe whereas Hemela Ganga was working without any implement and he (Pachkodram) was standing at a distance of 100 ft. There were three jail inmates with him and Ghanshyam was with accused Danar Bhatra and Hemela Ganga. When Ghanshyam went towards the jail warden, all of a sudden accused Danar Bhatra attacked Hemela Ganga with pickaxe on his head, however, he saw only one assault made by the accused. Thereafter, the accused also turned towards him and rushed towards him to attack him and attacked with pickaxe on his back. However, somehow he was able to escape. The accused also ran after him but in the meantime jail inmate Guddi caught hold of the accused. The above evidence of Pachkodram has been corroborated in material particulars by other injured witnesses PW-5 Ghanshyam as also PW-4 Kawasi Guddi who caught hold of the accused when he was chasing Pachkodram. The evidence of these witnesses further stands

P.T.O.

(17)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.1070/'00 **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

corroborated by the evidence of PW-3 Dandiram and PW-6 Pardeshi. The above evidence of these eyewitnesses has been further corroborated by the medical evidence given by (PW-10) Dr. B. S. Thakur. In the cross-examination of eyewitnesses namely Pachkodram and Ghanshyam, who sustained injuries in this incident as per their injury reports Ex. P/14 & P/13, the defence has not been able to elicit any circumstance which makes their evidence unreliable or untrustworthy. Therefore, to this extent, involvement of the accused/appellant in crime in question is based on the legal and clinching evidence and we do not find any illegality or infirmity in the impugned judgment of the trial Court.

Learned counsel for the accused/appellant argued that there is nothing on the record to show that the accused assaulted the deceased with an intention to cause his death and in fact the accused assaulted the deceased without premeditation on the spur of moment, without there being any rhyme or reason as such, the offence against the appellant does not travel beyond Section 304-II of the IPC.

As far as intention of the accused to cause death of deceased is concerned, where there is no direct evidence, the intention of the accused can be inferred from the facts and circumstances i.e. weapon used, size of the weapon, place where the assault took place, background facts leading to the assault, part of the body where the blow was given, as has been held by the Apex Court in the matter of **Thangaiya Vs. State of Tamil Nadu** reported in **2005 CRI.L.J. 634**. In the instant case, admittedly, the accused at the time of commission of the crime was holding the pickaxe for the purpose of weeding of the grass and no doubt, the pickaxe is agriculture implement which is a dangerous weapon, if it is used as a

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.1070/~~सन्~~ 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

weapon of offence, and by the said pickaxe the accused assaulted the deceased thrice on vital part of the body i.e. on the head as a result he sustained three injuries and most of the skull bone turned into pieces, therefore, the above act of the accused, nature of weapon and place where the assault took place, intention of the accused was writ large to commit murder of the deceased. He did not stop at that stage but he also rushed towards PW-2 Pachkodram and tried to attack him also, somehow he was able to escape, even then he received injury on his back. PW-5 also received injury on his thumb, therefore, there is ample evidence that the accused assaulted the deceased with an intention to cause his death, as such, conviction under Section 302 of the IPC and sentence imposed upon the accused under that section is based on legal evidence.

For the foregoing reasons, we do not find any ground to interfere with the finding of the trial Court convicting the accused/appellant for the aforesaid offence.

In the result, the appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Yogesh/Indu

P.T.O.